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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.P.No.4178 of 2022 and W.M.P. No.4320 of 2022

Madhiyazhagan

...Petitioner

vs

1. The Union of India,
rep. by the Government of
Union Territory of Puducherry,
rep. by its Chief Secretary to Government,
Chief Secretariat Buildings,
Goubert Avenue, Puducherry-605 001.
2. The Secretary to Government,
Local Administration Department,
Chief Secretariat Buildings,
Goubert Avenue, Puducherry - 605 001.
3. The Commissioner,
Puducherry Municipality,
Kambankalai Arangam Buildings,
Lal Bahadur Shastri Street,
Puducherry - 605 001.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for and examine the records of Notice No.975/PM/RO-II/A2/2019 dated 31.03.2020 issued by the third respondent and quash the same as it has been passed without following due process of law and hence a nullity under law.

For Petitioner : Mr.Babu Rangasamy

For Respondents: Mr.J.Kumaran,
Additional Government Pleader,
Puducherry

ORDER

[Order of this Court was delivered by T.RAJA, J.]

Challenging the impugned notice No.975/PM/RO-II/A2/2019 dated 31.03.2020 issued by the third respondent, the



Commissioner, Puducherry Municipality, the petitioner has come to this Court.

2. Learned counsel appearing for the petitioner submitted that the petitioner has been running a Flower Shop with temporary structure and tin sheet roof measuring 12 feet x 4 $\frac{3}{4}$ feet in the name and style of 'M/s.M.S.M.Malar Nilayam' from the year 2004 at Door No.224, Old Door No.120, Bharathi Street, Puducherry-1, which is the prime market place of Puducherry Town, consisting of several vending units/shops on the road side of the said street. However, the said shop premises existed for several decades in the said locality, in which, sale of goods were carried out by different shopkeepers from time to time by transfer of the superstructure therein by way of lease or sale. When the petitioner has been paying the property tax from the year 2005-06 to 2016-17 and electricity consumption charges till date, the third respondent issued a show cause notice dated 02.01.2019 under Section 449 of the Pondicherry Municipalities Act, 1973 stating that the petitioner is running the flower shop in the said premises without obtaining any trade licence. When the petitioner came forward to apply for the same, the third respondent refused to issue the application for obtaining trade licence on the ground that the said shop is located on the pavement of the street, which belongs to the Pondichery Municipality and therefore, the petitioner was turned out from obtaining the trade licence. While so, the third respondent issued another notice dated 31.03.2020 alleging that the petitioner is running the flower shop in the pavement, which vests with the Municipality and that the petitioner was directed to remove the encroachment at the said location within 7 days from the date of receipt of the notice. Moreover, the petitioner has also paid a sum of Rs.14,400/- to the third respondent by way of demand draft as rents for the years 2017-18 to 2020-21 along with covering letter dated 07.04.2020. Thereafter, the petitioner was unable to run his shop, due to the lock down imposed by the State and Central Government and therefore, he could not pay the rents in future to the third respondent. While so, on 15.02.2022 at about 10.30 a.m. five persons of the third respondent came to the petitioner's shop along with JCB earth mover machine to demolish the temporary superstructure without any notice or caution and caused great harassment to the petitioner and other row of shopkeepers at the intervention of the members of the Trader's Association of the market and the petitioner also has given his consent for demolishing the shop for the time being stating that he may be permitted to run the shop in the same place in future for his livelihood.

3. Learned Additional Government Pleader appearing for the respondents submitted that the petitioner, without any trade



licence, cannot run the flower shop in the pavement, belongs to the Puducherry Municipality. Secondly, he has been encroaching the public street and therefore, notice was issued on 31.03.2020 and he himself has stopped the business now.

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4. When the petitioner himself has agreed for demolishing the shop, it goes without saying that he himself has admitted that he has been encroaching the public road. Now, he has stopped running of his business in the pavement, belongs to the Puducherry Municipality,. Therefore, we are unable to find any merit in this petition filed by him. Accordingly, this writ petition stands dismissed. Consequently, W.M.P. No.4320 of 2022 stands closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Union of India,
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Puducherry - 605 001.

+1cc to M/s.Special Government Pleader, Puducherry, S.R.No.13725
+1cc to M/s.Babu Rangasamy Associates, Advocate, S.R.No.13280

W.P.No.4178 of 2022
and
W.M.P. No.4320 of 2022

SKM(CO)
RGA(31/03/2022)